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SUBJECT: DIPLOMATIC NOTE ON REFOULEMENT DELIVERED TO THE
KENYAN MFA

REF: NAIROBI 00067

1. Embassy Nairobi sent a diplomatic note to the Kenyan MFA on January 5 expressing concern over reports of refoulement of Somali asylum seekers, the text of which follows.

Begin Text of Diplomatic Note:

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs of the Republic of Kenya and has the honor to deliver the following message. We appreciate the Government of Kenya's continued role in seeking to stabilize Somalia. We further appreciate that the Government of Kenya has a responsibility to ensure border security and to interdict known terrorists.

The Government of Kenya also has humanitarian responsibilities based on international conventions that it has signed and pledged to maintain. The OAU Convention on Refugees, to which Kenya is a signatory, explicitly calls for allowing civilians at risk to seek asylum on its territory. The Geneva Convention calls for non-refoulement of refugees. The Universal Declaration of Human Rights recognizes the right to seek and enjoy asylum. Officials at U.S. Embassy Nairobi and the United Nations High Commission for Refugees have discussed this issue with Kenyan authorities over the past few weeks and received repeated assurances Kenya would honor its international obligations to admit asylum seekers.

We are concerned about reports that Kenya has returned over 400 Somali asylum seekers at the Liboi transit center, close to 300 more at Lamu, and an undetermined number by sea. Forcibly returning these persons to a place where their lives could be endangered is a transgression of the principle of non-refoulement as defined under the 1951 Convention Relating to the Status of Refugees.

We understand the Office of the United Nations High Commissioner for Refugees has extended its offer to provide immediate expertise and support and entry points for newly arriving persons from Somalia. The United States Government also stands ready to assist Kenya with these obligations. We believe appropriate balance between security and protection can be found by rigorous screening of all Somalis crossing into Kenya and appropriate security at screening sites. This will ensure that Kenya offers appropriate protection to legitimate asylum seekers while increasing its chances of catching suspected terrorists and extremists who can be dealt with appropriately under international criminal law.
(Complimentary closing)

End Text.
APPLETON